

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 819 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

BABUBHAI RAICHANDBHAI DABHI & 2 ORS

Versus

STATE OF GUJARAT

Appearance:

MR KB ANANDJIWALA for Petitioners

MR.S.R. DIVETIA,LD.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE R.R.JAIN

Date of decision: 19/12/96

ORAL JUDGEMENT

Per:S.D. Dave, J:-

Once again we are seeing a case in which though

the evidence on record would go to indicate the homicidal death of the deceased Bakiben, there is absolutely no evidence to warrant a conclusion that the appellants accused were the authors of the crime of murder punishable under Section 302 I.P.Code. We say so, upon the appreciation of the evidence brought on record by the prosecution with the assistance of learned counsel Mr. K.B. Anandjiwala for the appellants and learned Govt. Counsel Mr. S.R.Divetia.

The accused No.1 Babubhai Dabhi happens to be the husband of deceased Bakiben. Appellants accused No. 2 & 3 are parents-in-law of the deceased. The accused persons were put on trial for the alleged commission of the offence punishable under Section 302 r/w Section 34 I.P.C. They also additionally stood charged for the alleged commission of the offence punishable under Section 498A r/w Section 34 I.P.C.

The case of the prosecution is that, deceased Bakiben had no offspring by the marriage with the accused no.1 Babubhai Dabhi and that, she was not liked by her husband. She, according to the case of the prosecution was being subjected to mental and physical cruelty, and ultimately all the three accused persons under the common intention had murdered her on October 29, 1992 at about 6 a.m. at village Jagannathpura under Khedbrahma taluka of Sabarkantha district, and later on had hanged the dead body of the deceased on a tree, so as to create an evidence of the suicidal death. It is alleged that the accused persons had done so with an intention to cause the evidence of murder to disappear.

Appellants accused had denied the charge at Exhibit-3 and had pleaded not guilty. Placing reliance upon the prosecution evidence the Ld. Addl. Sessions Judge, Sabarkantha at Himatnagar, in Sessions Case No. 23 of 1993 has come to the conclusion that, all the offences against all the accused persons have been established. The accused persons therefore have been sentenced to imprisonment for life and to a fine of Rs.300/-, in default to the S.I. for three months for the offence punishable under Section 302 I.P.C. They have been sentenced to R.I. for one year and to a fine of Rs.200-00, in default to the S.I. for two months for the offence punishable under Section 498A I.P.C. All of them have been sentenced to the R.I. for six months and to a fine of Rs.200-00, in default to the S.I. for one month for the offence punishable under Section 201 r/w Section 34 I.P.C. The above said judgment of conviction and sentence has been brought in challenge before us by

the appellants in the present Criminal Appeal.

Ld. counsel Mr. Anandjiwala, who appears on behalf of the appellants urges that, there is absolutely no evidence to warrant a conclusion that, the accused persons had murdered deceased Bakiben. According to learned counsel, there is absolutely no evidence to warrant a conclusion that the deceased was subjected to cruelty as understood within the meaning of Section 498A I.P.C. The third and the last contention coming from Mr. Anandjiwala is that, if there was no murder duly established, there would be no question of doing anything with a view to cause the evidence of murder to disappear. In the view of ld. counsel for the appellants, therefore, the present appeal requires a full recognition and the appellants accused require to be acquitted. Ld. Govt. Counsel Mr. Divetia while combating the above said contentions urges that, even in absence of the direct evidence on record, the appellants accused could be convicted upon the basis of the circumstantial evidence and that, at any rate, there is enough evidence to warrant a conclusion that the appellants are guilty for the offence punishable under Section 498A I.P.C.

While evaluating the above said rival contentions coming from the counsels, we have perused the evidence on record. Learned counsels have taken us to the evidence of four witnesses, namely (1) Bhikabhai Bagadiya PW-1 Exhibit-9, (2) Dahyabhai Begadiya PW-2 Exhibit-12, (3) Ratanben PW-3 Exhibit-13 and (4) Nanji Kodar PW-4 Exhibit-14. But before going to the above said evidence which in our view would not say anything regarding the offence punishable under section 302 I.P.C. against the accused persons, we would like to read the evidence of Dr. Jethva PW-5 Exhibit-23. Dr. Jethva has testified that, while working as the Medical Officer at Khedbrahma Cottage Hospital, he had performed the autopsy on the dead body of deceased Bakiben on October 30, 1992 during morning hours. According to Dr. Jethva he was able to see certain injuries on the person of the deceased along with a legature mark. The medical expert had noticed the hemorrhage under the thyroid cartilage and in the tissues beneath the medial sternum. Dr. Jethva had also expressed the opinion that the deceased had died because of "Asphyxia due to throttling". The same opinion has been expressed in the Postmortem Report at Exhibit-25. Dr. Jethva has repelled the suggestion, during cross examination that the above said would not be the position in case of homicidal death. All the suggestions made during cross examination, for leading the medical expert to change the opinion and to come to the conclusion that,

the deceased had died a suicidal death have been repelled by him. Upon the careful examination of the evidence of Dr. Jethva at Exhibit-23 and the Postmortem Report at Exhibit-25 we are not in any hesitation in accepting the case of the prosecution that the deceased had died a homicidal death.

But in our opinion the case of the prosecution does not proceed further so far as the offence of murder is concerned against any of the three accused persons. PW-1 Bhikabhai Begadiya Exhibit-9 has stated that, deceased Bakiben was got married with the appellant accused no.1 and that, there were certain disputes and she was being subjected to mental and physical cruelty and she was required to revert back to the parental house. But later on the matter was settled amicably and she had gone to the husband's house. His say further is that, whenever the deceased used to visit the parental house, she used to make complaints against the husband and his relations and ultimately on the New Year's day the accused no.1 had carted the deceased back to his house. According to this witness, later on they were required to go to village Chikwa because somebody had died there, but when they had got down at Khedbrahmaba bus stand, one Hirabhai had met them and had informed them that, the deceased has been murdered and the dead body is hanged upon a tree. According to Bhikabhai, later on they had gone back to their village and ultimately had gone to village Jagannathpura and thereafter to the site. This evidence therefore tendered by Bhikabhai at exhibit-9 would not say anything against the appellant accused for the alleged commission of the offence punishable under section 302 I.P.C. Dahyabhai Begadiya, PW-2 Exhibit-12 also deposes in the similar lines. He says about the disputes between the wife and the husband, returning of the wife to the parental house, a later amicable settlement and the continued mental and physical cruelty to the deceased. Dahyabhai also says that, they wanted to go to village Chikwa, but one Hirabhai had informed them at Khedbrahma bus stand regarding the death of the deceased, and they had thought it fit to believe that the deceased must have been killed by the accused persons, and later on the dead body must have been hanged. This evidence also does not carry the case of the prosecution for the offence punishable under section 302 I.P.C. any way further. Mother Ratanben PW-3 Exhibit 13 says that, Bakiben was being subjected to mental and physical cruelty and later on when they had gone to the spot where the dead body was hanging up on a tree, it was her belief that, deceased must have been murdered by the accused persons. Lastly, there is the

sworn in testimony of PW-4 Nanji Kodar at Exhibit-14 who also says that, there were certain disputes but later on there was an amicable settlement and ultimately at Khedbrahma bus stand Hirabhai had informed them that, deceased has been murdered and the dead body has been hanged upon a tree. He also does not say anything regarding the complicity of the accused persons in the commission of the crime of murder. This witness has admitted that, at the investigational stage he had not informed the police by saying that Hirabhai was the man, who had met them at Khedbrahma bus stand and had given the information regarding the unfortunate incident. This could be eliminated from the zone of consideration for some time. Yet, the important aspect to be noticed is the fact that, Hirabhai the alleged messenger has not been examined by the prosecution. Even if this is ignored and the concentration is focussed on the oral testimony of the above said four witnesses, we shall have to say that, there is not even a whisper against the appellants accused for the alleged commission of the offence punishable under section 302 I.P.C.

Ld. Govt. Counsel Mr. Divetia urges that, there are certain established circumstances from which it could be deduced that the deceased was murdered by the accused persons. The circumstances, according to Mr. Divetia would be (1) the homicidal death of the deceased, (2) continuous mental & physical cruelty, (3) hanging of the dead body of the deceased upon a tree with a view to give it a show of suicidal death and (4) certain marks of injuries found on the person of the deceased.

We have indicated earlier that, we agree with the opinion rendered by DR. Jethva, the Autopsy Surgeon, who has said that the deceased had died a homicidal death. The other circumstances as pointed out by learned Government Counsel even if are accepted as fully established, then also they by themselves would not constitute a chain of circumstances from which it could be deduced that the accused persons and no other could be guilty for the murder of the deceased. In other words, in our opinion it cannot be said that the above said circumstances unerringly point towards the guilt of the accused and that no other hypothesis than the guilt of the accused is permissible.

Viewing this case from the angle from which it is being viewed by the learned Govt. Counsel also, it is impossible for a judicial conscience to come to the conclusion that, the appellants accused should be held liable and guilty for the offence punishable under

section 302 I.P.C. All the appellants accused therefore require to be acquitted of the offence punishable under section 302 I.P.C. If the charge of murder is not established, the charge under section 201 r/w section 34 I.P.C. also would not be sustained because the establishment of the said charge would pre-suppose the act of murder, and then the causing of the evidence of murder to disappear, with a view to get out of the main offence punishable under section 302 I.P.C. All the accused persons therefore require to be acquitted of the offence punishable under section 201 I.P.C. r/w section 34 I.P.C. We order accordingly.

So far as the offence punishable under section 498A I.P.C. is concerned, we must say that, there is no evidence in respect of this offence also - qua the appellants no. 2 & 3 respectively, who are the parents in-law of the deceased. Mother Ratanben PW-3, even in her police statement did not say anything against the said appellants accused. Other witnesses did make general omnibus detail - particular - less allegations against the accused. It is therefore clear that the conviction of the appellant accused no. 2 & 3 for the offence punishable under section 498A also does not appear to be sustainable. They require to be acquitted of the said offence also. We order accordingly.

So far as the appellant accused no.1 Babubhai Dabhi, the husband is concerned, it appears that there is enough material to warrant a conclusion that, he used to harass his wife and was guilty of mental & physical cruelty. The offence punishable under section 498A is clearly established against him from the prosecution evidence. Therefore we hold him guilty for the said offence.

The maximum punishment for the offence punishable under section 498A I.P.C. is R.I. for three years. The appellant accused no.1 is behind the bars from October 1992 continuously up to-date. More over he was sentenced to the R.I. for one year and a fine of Rs.200-00, in default to the S.I. for two months. This has already undergone by the appellant accused no.1. In the result, therefore, the appeal succeeds in part and the same is hereby partly allowed. All the accused persons are hereby acquitted of the offence punishable under section 302 and 201 r/w section 34 I.P.C. Appellants accused no.2 & 3 are also further acquitted of the offence punishable under section 498A I.P.C. The conviction of the appellant no.1 under section 498A is maintained.

In view of what we have said above regarding the sentence for the offence punishable under section 498A, the appellant no.1 who is behind the bars should be set at liberty forthwith, if not required in any other criminal case or proceedings. The bail bonds - qua the appellants no. 2 & 3 who are on bail shall stand cancelled.
